IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES BUTLER,	§	
	§	No. 44, 2011
Claimant/Appellant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
SAFE CHECK EAST, INC. et al.,	§	C.A. No. N09A-12-013
	§	
Employer/Appellees Below-Appellees.	§	
	§	

Submitted: May 27, 2011
Decided: July 14, 2011

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

O R D E R

This 14th day of July 2011, upon consideration of the opening brief and the record below,[1] it appears to the Court that:

(1) The claimant-appellant, Charles Butler, filed an appeal from the Superior Court's December 31, 2010 order affirming the decision of the Unemployment Insurance Appeal Board (the "UIAB" or the "Board") in favor of the employer-appellee, Safe Check East, Inc. ("Safe Check"). We find no merit to the appeal. Accordingly, we affirm.

[1] Because neither Safe Check nor the UIAB filed an answering brief, the Court informed the parties by letter dated May 3, 2011 that this matter would be decided on the basis of the opening brief and the record below.

(2) The record before us reflects that Butler began his employment with Safe Check in June 2004 as Director of Business Development. By letter dated August 7, 2009, Ava Kanaras, Safe Check's Chief Executive Officer, terminated Butler's employment on the grounds that Butler had sent e-mails to a co-worker that created a hostile work environment for the women at Safe Check and that constituted insubordination.[2] On August 9, 2009, a letter was sent to Kanaras from Butler's e-mail address apologizing for the offensive language contained in the e-mails. On that same date, Butler applied for unemployment insurance benefits with the Department of Labor.

(3) On August 18, 2009, the Claims Deputy determined that Butler was disqualified from receiving benefits because he had been terminated for just cause. Butler then filed an appeal with the Appeals Referee. An administrative assistant with Safe Check testified on behalf of the company by telephone. She had no first-hand knowledge of the e-mails. When asked if he had written the e-mails, Butler testified that he could not "say for sure," but that he had "no memory of sending these e-mails to any co-worker or subordinate." He further denied "everything that the employer is saying." The Appeals Referee reversed the decision of the Claims Deputy on the

[2] The e-mails, sent during May and July of 2009, attacked Safe Check's CEO in vulgar, sexist language.

ground that the testimony of the administrative assistant constituted hearsay. Safe Check then appealed the decision of the Appeals Referee to the UIAB.

(4) At the hearing before the UIAB, Kanaras and Butler's former supervisor at Safe Check testified on behalf of Safe Check. Kanaras testified that she warned Butler in January 2009 about offensive comments he had made concerning Safe Check employees, stating that such behavior "would no longer be tolerated." The former supervisor testified that he had heard Butler make insulting comments about female employees of Safe Check and that he had recommended to Kanaras that Butler be terminated for that reason. The Board was presented with evidence that Butler had received a copy of Safe Check's employee handbook, which stated that "disrespect of management" was "absolutely prohibited." The Board reversed the decision of the Appeals Referee, finding that Butler had been terminated for just cause.

(5) In this appeal, Butler claims that the Superior Court's decision must be reversed because a) there is insufficient evidence in the record that he was the author of the offensive e-mails; and b) the Superior Court improperly considered the "apology" e-mail, which was not part of the record before the UIAB.

(6) An employer has "just cause" to terminate an employee when the employee's conduct constitutes a "willful or wanton" act that violates the employer's interests, the employee's duties or the employer's standard of conduct.[3] Willful or wanton conduct can be proven by conduct amounting to a "reckless indifference" to established and acceptable workplace performance.[4] In order to prove that an employee was terminated for "just cause," the employer must demonstrate that there was a policy in existence that prohibited the employee's conduct and that the employee was aware of the policy.[5]

(7) The Superior Court's standard of review in an appeal from a decision of the UIAB is whether there is substantial evidence in the record to support the Board's findings and whether such findings are free from legal error.[6] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[7] The Superior Court does not independently weigh the evidence, determine questions of

[3] Del. Code Ann. tit. 19, §3314(2); *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986).
[4] *Roshon v. Appoquinimink School Dist.*, Del. Supr., No. 178, 2010, Jacobs, J. (Oct. 4, 2010) (citing *Tuttle v. Mellon Bank of DE*, 659 A.2d 786, 789 (Del. Super. 1995)).
[5] Id.
[6] *UIAB v. Duncan*, 337 A.2d 308, 309 (Del. 1975).
[7] *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

credibility or make its own factual findings.[8] The standard of review applicable to this Court is the same as that applicable to the Superior Court.[9]

(8) We have carefully reviewed the record in this case, including the transcripts of the hearings before the Appeals Referee and the Board. Contrary to Butler's first claim, we conclude that there was sufficient evidence in the record before the Board that the offensive e-mails were sent by him. It is undisputed that the e-mails were sent from Butler's computer and, even though others may have had access to his computer, the Board was free to reject Butler's explanation that he did not remember sending the offensive e-mails and that someone who wanted him fired must have done it.

(9) We need not decide Butler's second claim that the Board improperly considered the "apology" e-mail because, even without that letter, there was substantial evidence before the Board to support its decision that Butler was terminated for "just cause."[10] There is no dispute that Butler previously was warned to stop making offensive comments about others in the workplace. The vulgar e-mails subsequently sent from Butler's computer clearly were prohibited by the employee handbook and against the employer's interests. The only question for resolution by the Board was

[8] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).
[9] Id.
[10] Interestingly, Butler concedes that he wrote the letter in his opening brief, but states that he did so solely to protect his interest in monies owed to him by Safe Check.

who sent the e-mails. The Board obviously did not credit Butler's explanation that he did not remember sending them and that some unknown person who wanted him fired had done it. This Court will not re-visit the Board's findings in that regard. As such, the Superior Court's judgment affirming the Board's decision must itself be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice